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<b>DANIEL F. O'DONNELL, JR., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 04-1545</b>
	)	<b>Issued: January 12, 2005</b>
<b>DEPARTMENT OF THE NAVY,</b>	)	
<b>PHILADELPHIA NAVAL SHIPYARD,</b>	)	
<b>Philadelphia, PA, Employer</b>	)	
	)	

### Case Submitted on the Record

DAVID S. GERSON, Alternate Member  
WILLIE T.C. THOMAS, Alternate Member  
A. PETER KANJORSKI, Alternate Member

This case is before the Board for the fourth time. In the first appeal, the Board affirmed an Office decision dated September 23, 1987, which suspended appellant's compensation,

pursuant to 5 U.S.C. § 8123(d), for failure to attend a medical appointment.<sup>1</sup> On appeal for the second time, the Board affirmed the October 8, 1991 and June 25, 1992 decisions of the Office, denying appellant's request for a lump-sum payment.<sup>2</sup> In the third appeal, the Board affirmed an April 23, 2002 decision of the Office denying modification of its termination of appellant's compensation and authorization for medical treatment effective March 26, 2000.<sup>3</sup> The Board further affirmed the Office's finding that appellant had not established any continuing disability after March 26, 2000 due to his accepted conditions of cervical strain and pain disorder. The findings of fact and the conclusions of law from the prior decisions are hereby incorporated by reference.

By letter dated April 14, 2003, appellant requested reconsideration of his claim. In support of his request, he submitted a report dated March 19, 2003 from Dr. James J. Kerrigan, a Board-certified neurologist, who discussed appellant's complaints of pain in the neck radiating to the left arm and low back pain radiating into his left leg. He noted that appellant "states that these symptoms began 32 years ago when he had a slip and fall while at work, landing on his neck and back." Dr. Kerrigan diagnosed cervical spondylosis with probable left cervical C6-7 radiculopathy, lumbar myofascial pain and spondylosis and peripheral neuropathy of uncertain etiology.

In a report dated April 6, 2003, Dr. Arnold D. Goldman, a Board-certified psychiatrist, indicated that he had evaluated appellant on July 24, 1981 and November 1, 1983. He noted that appellant related that he was incarcerated from 1984 to 1989 "for possession of chemicals for manufacturing illicit drugs." Dr. Goldman stated that appellant related that a recent magnetic resonance imaging (MRI) scan revealed cervical disc problems.<sup>4</sup> He found that appellant had a preexisting personality disorder which did not prevent him working in military service and at the employing establishment prior to his work injury. Dr. Goldman stated:

"Regardless of how fertile the soil may have been for interpreting stress into somatic symptoms, had it not been for the injury where [appellant] slipped and fell and injured himself, he would not have developed this well-documented chronic pain disorder. His pain disorder is unfortunately being fed by his ongoing battle for work[ers'] compensation."

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<sup>1</sup> *Daniel F. O'Donnell*, Docket No. 88-638 (issued August 24, 1988). The Office accepted that on January 19, 1970 appellant, who was then a 24-year-old heavy duty mechanic, sustained a cervical spine strain and developed somatoform psychogenic pain disorder when he slipped on ice alighting from his truck. He stopped work on March 2, 1970 and did not return. Appellant was separated from his employment due to a reduction-in-force on March 27, 1970.

<sup>2</sup> *Daniel F. O'Donnell*, Docket No. 93-206 (issued March 11, 1994).

<sup>3</sup> *Daniel F. O'Donnell*, 54 ECAB \_\_\_\_ (Docket No. 02-1468, issued February 28, 2003).

<sup>4</sup> An MRI scan of the cervical spine, obtained on February 21, 2003 listed findings of "[m]ild canal stenosis at C6-7 secondary to disc osteophytes complex" and "a small central disc herniation at C4-5 and borderline diameter at C5-6."

Dr. Goldman opined that appellant “was not a candidate for psychiatric care” but instead needed a “settlement to end the ongoing source of frustration that was promoted by his denial of benefits and then reinstituting them.”

Appellant further submitted a rating decision April 16, 2003 from the Department of Veterans’ Affairs granting him a nonservice-connected pension effective July 27, 2002.

By decision dated July 1, 2003, the Office denied modification of its prior finding that appellant had no further disability due to his accepted employment injury. The Office noted that Dr. Goldman attributed appellant’s disability “to his ongoing battle to receive benefits” and that Dr. Kerrigan did not address causation.

On November 12, 2003 appellant again requested reconsideration of his claim. He submitted an October 6, 2003 report from Dr. Goldman, who clarified that appellant’s attempt to receive workers’ compensation benefits contributed to his pain disorder because “any stress that [he] experiences has transformed into somatic complaints....” Dr. Goldman found that as appellant had MRI scan findings “which most likely resulted from his injury, this in itself should be a basis for proving he has a work[-]related injury on a physical basis.”

Dr. Goldman continued:

“If one were to put the two factors together, one, [appellant] has an injury that by itself does not explain the degree of complaint he has, two, the injury allowed his psyche to focus on those complaints and transfer all the stress in his life into a pain syndrome. I am of the opinion they are definitely related, one to the other. Had [appellant] not had the injury he might have had some other somatic symptoms of stress, which certainly would not have qualified for any kind of work-related discussion of causality. It is my opinion that his injury did start the whole process that has resulted in his chronic pain disorder which is now being called somatoform disorder or conversion disorder.

Dr. Goldman concluded that appellant should receive workers’ compensation benefits.

Dr. Kerrigan, in a follow-up report dated August 15, 2003, diagnosed chronic myofascial cervical pain and C6 radiculopathy. He noted that appellant “dates this back to his injury 33 years ago.” Dr. Kerrigan also diagnosed lumbar myofascial pain and spondylosis and peripheral neuropathy. He stated, “[Appellant] has concerns with regards to his ability to work. Within a reasonable degree of medical certainty, I do not feel that he would be able to return to the type of work he was doing before as a crane mechanic.” Dr. Kerrigan found that appellant could perform sedentary employment and listed work restrictions.

In an unsigned report dated February 13, 2003, from the Veterans Administrations Medical Center, Dr. Francisco Garcia, a psychiatrist, diagnosed mild depression and a history of a back and neck injury. He opined that appellant was “unemployable, not because of a psychiatric difficulty, but most probably mainly due to his physical difficulties.”

In another unsigned report from the Veterans Administrations Medical Center, dated February 13, 2003, Dr. Sin Chen Chang, Board-certified in family practice, diagnosed, *inter alia*,

degenerative arthritis of the cervical spine at C5-7, a cervical disc herniation at C4-5, radiculopathy at C6-7 and degenerative arthritis of the lumbar spine at L5-S1 with radiculopathy.

In an unsigned report dated October 20, 2003, Dr. Neil Kahanovitz, a Board-certified orthopedic surgeon, noted that after appellant's 1970 injury he was "put on full disability shortly after and did not work following that period and has not worked since. In 2000 [he] was reevaluated and told that he was no longer disabled and should return to work." Dr. Kahanovitz noted that appellant reported no change in his symptoms and opined that "[t]here does not appear to be any significant clinical change that would warrant change in his working ability."

By decision dated February 13, 2004, the Office denied modification of its July 1, 2003 decision.

### **LEGAL PRECEDENT**

Once the Office meets its burden of proof to terminate appellant's compensation benefits, the burden shifts to [him] to establish that he had disability causally related to his accepted injury.<sup>5</sup> To establish a causal relationship between the condition as well as any attendant disability claimed and the employment injury, an employee must submit rationalized medical evidence based on a complete medical and factual background supporting such a causal relationship.<sup>6</sup> Rationalized medical evidence is evidence which includes a physician's rationalized medical opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>8</sup> The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.<sup>9</sup>

### **ANALYSIS**

In the previous appeal, the Board affirmed the Office's termination of appellant's compensation and authorization for medical treatment effective March 26, 2000 and its finding

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<sup>5</sup> *Manuel Gill*, 52 ECAB 282 (2001).

<sup>6</sup> *Id.*

<sup>7</sup> *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>8</sup> *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>9</sup> *James Mack*, 43 ECAB 321 (1991).

that he had not established continuing disability after March 26, 2000.<sup>10</sup> Appellant thus, has the burden of proof to show that he had further residuals of his accepted conditions of cervical strain and pain disorder subsequent to March 26, 2000.<sup>11</sup> In support of his claim for a continuing cervical condition, appellant submitted a report dated March 19, 2003 from Dr. Kerrigan, diagnosing cervical spondylosis and a probable left cervical radiculopathy at C6-7, lumbar myofascial pain and spondylosis and peripheral neuropathy. He noted that appellant related that his symptoms began 32 years before when he slipped and fell at work. The Board notes that the Office did not accept appellant's claim for cervical spondylosis, cervical radiculopathy, lumbar myofascial pain, lumbar spondylosis or peripheral neuropathy. He bears the burden of establishing causal relationship for any condition not accepted by the Office through the submission of rationalized medical opinion evidence.<sup>12</sup> In this case, while Dr. Kerrigan noted that appellant attributed the onset of his symptoms to a slip and fall 32 years ago, he did not specifically relate the diagnosed conditions to his employment injury. Medical evidence that does not offer any opinion on the cause of an employee's condition is of diminished probative value on the issue of causal relationship.<sup>13</sup> Additionally, a physician's report is of little probative value where it is based on a claimant's belief regarding causal relationship rather than a doctor's independent judgment.<sup>14</sup> As Dr. Kerrigan did not discuss the cause of the diagnosed condition, the Board finds that his opinion is of little probative value.

In a follow-up report dated August 15, 2003, Dr. Kerrigan diagnosed chronic cervical myofascial pain and C6 radiculopathy, lumbar myofascial pain and spondylosis and peripheral neuropathy. He noted that appellant related the onset of his cervical symptoms 33 years prior. Dr. Kerrigan opined that appellant was unable to return to his date-of-injury position, but could perform sedentary employment. Again, as Dr. Kerrigan did not discuss the cause of the diagnosed conditions or appellant's disability, the Board finds that his opinion is of little probative value.<sup>15</sup>

Dr. Goldman, in a report dated April 6, 2003, diagnosed a pain disorder. He noted that appellant's preexisting personality disorder did not prevent him from working prior to his employment injury. Dr. Goldman found that had it not been for his slip and fall at work in 1970, he would not have developed a pain disorder. He opined that appellant's pain disorder was "being fed by his ongoing battle" for compensation benefits. Dr. Goldman's finding that his employment injury caused his pain disorder because he was able to work prior to his

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<sup>10</sup> See *Daniel F. O'Donnell*, *supra* note 3. The Board found that the opinion of the impartial medical examiner, Dr. Michael C. Raklewicz, a Board-certified orthopedic surgeon, established that appellant's cervical condition ceased by March 26, 2000. The Board further found that the opinion of Dr. Raymond P. Seckinger, a Board-certified psychiatrist, established that appellant had no current psychiatric condition or disability due to his pain disorder.

<sup>11</sup> See *Manual Gill*, *supra* note 5.

<sup>12</sup> *Charlene R. Herrera*, 44 ECAB 361 (1993).

<sup>13</sup> *Linda I. Sprague*, 48 ECAB 386 (1997).

<sup>14</sup> *Earl David Seal*, 49 ECAB 152 (1997).

<sup>15</sup> *Michael E. Smith*, 50 ECAB 313 (1999); *Linda I. Sprague*, *supra* note 13.

employment injury is of little probative value, as the Board has held that a medical opinion stating that a condition is causally related to an employment injury because the employee was asymptomatic before the injury, but symptomatic after it is insufficient, without supporting rationale to establish causal relationship.<sup>16</sup> Additionally, Dr. Goldman did not address the relevant issue of whether appellant had any further disability due to his chronic pain disorder. He further found that appellant required no further psychiatric treatment. Thus, Dr. Goldman's opinion is insufficient to meet appellant's burden of proof to establish that he has continuing disability or a residual condition requiring further medical treatment due to his accepted employment injury.

In a report dated October 6, 2003, Dr. Goldman attributed appellant's chronic pain syndrome to his employment injury. He did not, however, specifically address the relevant issue of whether appellant was disabled from employment after March 26, 2000, due to his accepted employment injury. The Office accepted that appellant's employment injury caused chronic pain syndrome but further determined and the Board affirmed, that the chronic pain syndrome ceased by March 26, 2000. Additionally, while Dr. Goldman stated that appellant should receive workers' compensation benefits, he did not provide a rationalized finding explaining why, with reference to the specific facts in this case, appellant's employment injury caused disability over 30 years later. Thus, the Board finds his opinion is insufficient to meet appellant's burden of proof.<sup>17</sup>

The record contains unsigned reports from Dr. Chang and Dr. Garcia dated February 13, 2003 and from Dr. Kahanovitz dated October 20, 2003. The Board has held that unsigned medical reports are of no probative value as the author cannot be identified.<sup>18</sup>

Regarding the award from the Department of Veterans Affairs finding that appellant is entitled to a nonservice-connected pension effective July 27, 2002 based on his disability, the Board notes that findings of other agencies with respect to whether or not an employee is disabled are not binding on the Office or the Board with respect to whether the individual is disabled under the Act.<sup>19</sup>

On appeal appellant's representative challenges the probative value of the reports of the impartial medical examiner and second opinion examiner relied upon by the Office to terminate appellant's benefits and consequently contends that the Office failed to meet its burden of proof to terminate compensation benefits. The Board, however, previously affirmed the Office's

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<sup>16</sup> *John F. Glynn*, 53 ECAB \_\_\_\_ (Docket No. 01-1184, issued June 4, 2002).

<sup>17</sup> *Jimmie H. Duckett*, 52 ECAB 332 (2001).

<sup>18</sup> *See Merton J. Sills*, 39 ECAB 572 (1988).

<sup>19</sup> *Henry C. Garza*, 52 ECAB 205 (2001).

termination of compensation in its February 28, 2003 decision<sup>20</sup> and thus, pending further review by the Office pursuant to 5 U.S.C. § 8128, the subject matter reviewed is *res judicata*.<sup>21</sup>

Appellant's representative further asserts that the Office erred in interpreting Dr. Goldman's report; however, as previously discussed in this decision, Dr. Goldman's opinion is insufficient to support a finding that appellant has any continuing disability due to his accepted condition of chronic pain disorder after March 26, 2000.

### **CONCLUSION**

The Board finds that appellant has not established that he had any further disability or residual condition after March 26, 2000 causally related to his accepted employment injury.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated February 13, 2004 and July 1, 2003 are affirmed.

Issued: January 12, 2005  
Washington, DC

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>20</sup> See *Daniel F. O'Donnell*, *supra* note 3.

<sup>21</sup> *Hugo A. Mentink*, 9 ECAB 628, 629 (1958).